UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1996/6
25 May 1996

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities

Working Group on Indigenous Populations
Fourteenth session,
29 July-2 August 1996
Item 9 (a) of the provisional agenda

OTHER MATTERS: MEETINGS AND SEMINARS

# Report of the Expert Seminar on Practical Experience Regarding Indigenous Land Rights and Claims

(Whitehorse, Canada, 24-28 March 1996)

Rapporteur: Mr. José Aylwin Oyarzún

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# I. ORGANIZATION OF THE EXPERT SEMINAR

1. At the invitation of the Government of Canada, the Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims was held at Whitehorse, Canada, from 24 to 28 March 1996. The Expert Seminar was part of the programme of activities for the International Decade of the World's Indigenous People which was approved by the General Assembly in its resolution 49/214 of 23 December 1994. The request to organize the seminar was made by the Commission on Human Rights in its resolution 1994/29 of 4 March 1994 and endorsed by the Economic and Social Council in its decision 1994/248 of 22 July 1994. The present report is a record of the discussion and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people". In this report, both expressions are used without prejudice to the position of particular delegations or organizations.

## A. Participation

2. Invitations to nominate experts were extended to the Governments of Argentina, Australia, Botswana, Brazil, Chile, Denmark, Fiji, Finland, Indonesia, Kenya, Malaysia, Mexico, New Zealand, Nicaragua and the Russian Federation and to Canada as the host Government.

3. The following indigenous organizations were invited to nominate experts: Aboriginal and Torres Strait Islander Commission, Congreso General Kuna, Consejo Aguaruna y Huambisa, Consejo de Organizaciones Mayas de Guatemala, Conselho dos Provos e Organizacoes Indigenas do Brasil, Coordinadora de Pueblos Indigenas de Centro y Sud America, Cordillera Peoples Alliance of the Philippines, International Law Resource Center, Inuit Circumpolar Conference, MAA Development, Maori Congress, Nepal Federation of Nationalities, Organizacion Nacional Indigena de Colombia, Saami Council, World Council of Indigenous Peoples and the Yukon Council of First Nations as the host indigenous organizations.

4. The following resource persons were invited to prepare background papers: Mr. Ken Castes, Professor of History, University of Waikato, New Zealand; Mrs. Erica-Irene Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations; Ms. Donna Gasgonia, Executive Director of the Foundation for the Philippine Environment; Mr. Roger Plant, Special Adviser on Indigenous Issues, United Nations Mission in Guatemala (MINUGUA); Mr. Roque Roldan Ortega, Executive Director of the Centro de Cooperación al Indígena, Bogotá, Colombia. The background papers (see. para. 8) are contained in the addendum to this report.

5. United Nations organs and specialized agencies as well as other relevant intergovernmental organizations were invited to send representatives.

6. Mrs. Daes and Mr. Roldan Ortega were not able to attend the seminar. Mr. Enrique Sanchez was invited to replace Mr. Roldan Ortega. The list of participants is contained in the annex.

## B. Agenda

7. The Expert Seminar adopted the following agenda:

1. Opening of the meeting

2. Election of officers

3. Adoption of the agenda

4. An overview of indigenous land rights and claims identification of problems:

   (a) The obligation of countries to recognize, demarcate and give legal protection to indigenous lands and resources;

   (b) The problems of the claims processes;

   (c) The concept of "extinguishment" - a colonial concept that must be re-examined;

   (d) The link between land rights and self-determination and the experience of indigenous peoples with colonialism;

   (e) The loss of lands and resources for military purposes.

5. Discussion of the negotiation process and legal arrangements for the demarcation, titling and protection of indigenous lands.

6. Land as an economic base: opportunities for sustainable development and arrangements concerning the use and sharing of natural resources.

7. The role of intergovernmental organizations: technical cooperation to Governments and indigenous organizations.

8. Adoption of the conclusions and recommendations.

## C. Documentation

8. The following background papers were prepared for the Expert Seminar at the request of the United Nations Centre for Human Rights:

"A concise overview of the United Nations system's activities regarding indigenous peoples", by Erica-Irene Daes (HR/WHITEHORSE/1996/SEM/2);

"First peoples and the land: a global overview of indigenous land claims and settlements", by Ken Coates (HR/WHITEHORSE/1996/SEM/3);

"Notes on the legal status and recognition of indigenous land rights in the Amazonian countries", by Roque Roldan Ortega (HR/WHITEHORSE/1996/SEM/4);

"Ancestral domains of indigenous peoples: growth centres for economic and environmental cooperation", by Donna Gasgonia (HR/WHITEHORSE/1996/SEM/5);

"Addressing indigenous land rights and claims: the role of international technical assistance", by Roger Plant (HR/WHITEHORSE/1996/SEM/6).

9. The following papers were submitted by participants and distributed in their original language:

Paper submitted by the Grand Council of the Crees, "An overview of indigenous land rights and claims" (HR/WHITEHORSE/1996/SEM/CRP.1);

Paper submitted by the Saami Council, "The legal status of Saami land rights in Finland, Russia, Norway and Sweden" (HR/WHITEHORSE/1996/SEM/CRP.2);

Paper submitted by the Grand Council of the Crees, "The negotiation process and legal arrangements" (HR/WHITEHORSE/1966/SEM/CRP.3);

Paper submitted by the Metis National Council "Metis land and resources" (HR/WHITEHORSE/1996/SEM/CRP.4);

Paper submitted by the Instituto de Estudios Indígenas, Universidad de la Frontera, Chile, "Reivindicaciones y derechos sobre tierras indígenas en Chile" (HR/WHITEHORSE/1996/SEM/CRP.5);

Paper submitted by the Grand Council of the Crees, "Making treaties, breaking treaties: the negotiation process" (HR/WHITEHORSE/1996/SEM/CRP.6);

Paper submitted by the Innu Nation, no title (HR/WHITEHORSE/1996/SEM/CRP.7);

Draft report of the Expert Seminar (HR/WHITEHORSE/1996/SEM/CRP.8);

Draft report of the Expert Seminar (HR/WHITEHORSE/1996/SEM/CRP.9);

Paper submitted by the Inuit Circumpolar Conference, "Situation of Inuit land rights in the Russian Federation" (HR/WHITEHORSE/1996/SEM/CRP/10).

## D. Opening of the Seminar and election of officers

10. On 24 March 1996, the Seminar was opened by a representative of the Assistant Secretary-General for Human Rights. An inaugural address was given by Mr. Ron Irwin, Minister for Indian Affairs and Northern Development.

11. The following officers were elected by acclamation:

Chairman: Mr. David Keenan (Canada);

Rapporteur: Mr. José Aylwin (Chile).

12. The Centre for Human Rights was represented by Mr. Julian Burger, Mr. José Carlos Morales, Mrs. Elsa Stamatopoulou-Robbins and Ms. Miriam Zapata.

## II. AN OVERVIEW OF INDIGENOUS LAND RIGHTS AND CLAIMS: IDENTIFICATION OF PROBLEMS

13. Mr. Coates, in introducing this item, examined the global nature of the contemporary land claims process. He argued that the contradictions between indigenous and non-indigenous world views created fundamental tensions in land negotiations. The objective should be to secure binding, sustainable legal agreements arising out of the specific cultural and legal traditions which also manage to bridge the social, spiritual and economic gap between peoples. The modern treaty process since the Second World War originated in the struggle of indigenous peoples to survive as distinct societies and to secure a measure of social and economic justice and in the desire of national Governments to remove the uncertainty accompanying indigenous claims and rights to the land. Governments are pushed to settle land claims agreements by legal obligations, a sense of moral or ethical duty or, more commonly, to remove a potential obstacle to economic development.

14. Recent settlements, particularly in Canada and New Zealand, suggest that treaty agreements are not a panacea and will not quickly and decisively resolve the challenges facing indigenous peoples. Nor, it must be pointed out, are the settlements a major threat to existing social and economic systems. In practice, they have proved to be more evolutionary than revolutionary in their impacts. Modern treaty negotiations also suggest a fundamental gap between indigenous and non-indigenous goals. For national Governments settlements are, first and foremost, an end in themselves, promoted because they provide assurance for subsequent development. Indigenous peoples, in contrast, see treaty settlements as a means to an end, with the agreement providing the tools necessary to support and strengthen traditional languages and culture. At their very root, modern treaties are about the willingness of non-indigenous peoples to accept, and even to celebrate, the survival and existence of indigenous cultures.

15. During the subsequent discussions, indigenous speakers reported continuing hardships and crises in their communities. The Seminar heard reports of the destruction of indigenous communities, systematic failures by national Governments to honour legal and constitutional obligations, problems arising from the privatization of indigenous lands, a lack of attention to the principles of the Charter of the United Nations relating to self-determination, and ongoing difficulties with land claims negotiations. Participants spoke of direct military or police action, efforts to constrain indigenous cultures, or economic restrictions creating intense hardship and forcing indigenous peoples off traditional lands.

16. Several governmental experts reported on constitutional or legislative initiatives designed to address outstanding obligations and commitments to indigenous peoples, and provided information about efforts to ameliorate social and economic disadvantages. The Seminar also heard a series of statements from the First Nations of Yukon, British Columbia and Alaska which outlined the spiritual and cultural foundation for contemporary land claims.

Presentations by indigenous elders provided an introduction to the continuing strength of indigenous attachment to the land and natural resources. The sentiments pervading the presentations were ones of anger, frustration, desperation and continuing hope. Expressions of hope focused on the belief that the international community, including but not restricted to the United Nations, could be mobilized to support the land rights of individual indigenous communities.

17. The representative of the Inuit Circumpolar Conference drew attention to the power and domination associated with colonialism, and the manner in which indigenous peoples were deliberately stripped of their land and resources by colonial powers. Attention was also drawn to the "once and for all time" approach to settlements required by Governments; the representative argued that treaties represented broad social and political contracts and had to be able to respond to changing circumstances. She outlined the effects of colonization on the Unuit, including the impact of environmental degradation, loss of autonomy and erosion of human rights, and commented specifically on the relationship between self-determination and the struggle for land rights. She also discussed the impact of military operations on indigenous peoples, including dislocation from traditional territories, and indicated that the Inuit Circumpolar Conference was advocating the establishment of the Arctic as a "zone of peace". The Inuit Circumpolar Conference was particularly interested in the insistence of national Governments on extinguishment; the Inuit concluded that negotiations on land rights after deciding that the alternative, such as unchecked resource development, was less acceptable.

18. The observer for the Grand Council of the Crees provided an overview of the process leading to the James Bay Agreement in 1975 and urged the United Nations to test the Cree treaty and subsequent relations with the federal and provincial governments against the standards of international law and convention on human rights. He described the difficulties with the implementation process, pointing out that the treaty was negotiated only because of a legal challenge by the Cree and Inuit threatened to block a major hydro-electric project and that extinguishment of aboriginal title was presented as a non-negotiable element by the governments. The Canadian Government had denied the indigenous peoples their right to self-determination.

19. The observer for the International Indian Treaty Council suggested that modern treaty discussions had to take into account existing and historic agreements, many of which were not honoured by the colonial powers and national Governments that signed them. Specific attention was drawn to the terms of the Charter of the United Nations and subsequent United Nations documents in which benchmarks for self-determination had been established that had not generally been honoured. She also pointed out that the Alaska Native Claims Settlement Act was not a negotiated settlement, as that concept was generally understood. Many governmental actions would not withstand the test of comparison with the articles of the international instruments on human rights, including the Convention on the Prevention and Punishment of the Crime of Genocide.

20. The representative of the Consejo Aguaruna Y Huambisa outlined the challenges associated with the imperatives of global market economies in indigenous communities. The high priority assigned to the efficient use of lands and resources, defined in market terms, was encouraging rapid development in areas currently inhabited by indigenous peoples. Local indigenous authorities had responded to these difficulties by establishing bi-annual meetings of chiefs to develop sustainable economic strategies, backed up with educational and cultural initiatives. Other initiatives included co-management systems governing regional resource use, an emphasis on community-level organization, and a commitment by indigenous peoples to sustainable economic development strategies.

21. The representative of the Sami Council highlighted the importance of negotiation of land and land ownership to the realization of indigenous aspirations. The draft United Nations declaration on the rights of indigenous peoples as elaborated by the Working Group on Indigenous Populations was a basis for universal indigenous rights, and provided support to indigenous land rights.

22. A presentation on behalf of the New Zealand Maori Council outlined the main land-based issues facing the Maori, described a series of settlements and debates relating to land and resource issues, and explained the collective basis of land ownership. The representative called for a discussion of types of collective land ownership and suggested that the World Bank consider making loans to indigenous peoples to help them establish and develop their collectively owned lands.

23. The representative of the Conselho de ArticulaÇao dos Povos e OrganicaÇoes Indigenas do Brazil outlined the gap between the implementation of legislation relating to indigenous peoples and the implementation of policies. A description of difficulties with demarcation of indigenous territories and efforts to secure stable land allocations illustrated the international tension between economic development and indigenous land rights. The speaker appealed for the right of indigenous peoples to physical and cultural survival, argued that indigenous peoples should be permitted to live as separate peoples, not inferior to others and not objects to be manipulated, and highlighted the importance of international opinion in influencing national actions.

24. The representative of Nicaragua described recent efforts at constitutional reform, focusing on provisions relating to indigenous peoples in the eastern part of the country and the establishment of autonomous indigenous districts in the region. The emphasis in the new provisions was on providing the cultural, linguistic and economic rights needed for the survival of indigenous societies and on the difficulties, especially financial, facing the Government. The speaker also drew attention to regional initiatives in Latin America designed to increase public information about indigenous issues.

25. The representative of the Consejo de Organizaciones Mayas de Guatemala described the spiritual and cultural importance of land to the Mayan people of the country and region, and the effort being made to use the current peace process to re-establish indigenous control of some traditional lands. The social costs associated with the loss of the land were borne by the indigenous

peoples; their efforts to regain their land was on the basis of entitlement and cultural connection, and not as a gift from the Government. The speaker also pointed out the elders' concerns about the weakening of oral traditions and the need to re-establish cultural relationships with the land.

26. The representative of the Indian Law Resource Centre offered an extended critique of "the pattern of lawlessness" of national Governments, arguing that they had systematically ignored legal and moral obligations to indigenous peoples. Describing the contemporary situation as "concessionary colonialism", he argued that Governments repeatedly abandoned legal obligations to indigenous peoples, established differential legal standards for indigenous communities and otherwise maintained a tradition of ignoring legal commitments.

27. An Athapaskan Chief from Alaska provided an update on the Alaska Native Claims Settlement Act and the indigenous peoples of Alaska and argued that the imposed agreement violated basic principles of the Charter of the United Nations. The settlement had not been fully and properly ratified and lacked legitimacy among the indigenous peoples affected, who were struggling to maintain their lifestyle under the terms of the settlement.

28. The representative of the Cordillera Peoples' Alliance pointed out that land is at the core of the contemporary indigenous struggle and provided a review of the land rights situation in the Philippines. He described a variety of initiatives designed to provide greater local autonomy in the management of land and outlined the threat posed to indigenous peoples from major economic development initiatives. The report concluded with the recommendation that the United Nations urge Governments to recognize indigenous rights to ancestral lands.

29. Four speakers from the Kaska Nation provided an introduction to the cultural and spiritual connection to the land and to the primacy of land rights to indigenous peoples. The Kaska people faced a unique challenge due to the fact that their traditional territories span three different political jurisdictions (Yukon, British Columbia and the Northwest Territories) and that land claims settlements would therefore be influenced by different political realities.

30. The observer for the Tribal Council of the Treaty 4 Territory described how in the nineteenth century his people had signed a treaty relating to their land. The representative stressed that the elders never considered that, by signing the treaty, they had relinquished their lands. He outlined the difficulty of negotiating in jurisdictions divided between the federal Government and the provinces and called for the establishment of an independent process for resolving indigenous rights disputes.

31. The observer for the Metis National Council described his group's exclusion from the land claims process and its continuing efforts to have their right to self-determination recognized. He suggested that groups such as the Metis National Council required international support in order to force national Governments to act. He stated that the concept of "extinguishment" was a colonial notion like the law of discovery or terra nullius.

32. The observer for the Innu Nation described difficulties with the contemporary Canadian land claims processes and suggested that new arrangements, based on oversight by an independent body, nation-to-nation relationships and a recognition of the national Government's fiduciary responsibility were required. He noted that the negotiation process could go on for so long that the process itself threatened the future of indigenous land claims.

33. An expert representing the Indigenous Land Corporation of Australia provided an analysis of the recent Mabo decisions in Australia, which struck down the legal concept of terra nullius and which provided a new foundation for Aboriginal land rights. He also pointed out that the court decision was relatively limited in scope and did not apply to the vast majority of land in the country.

34. The representative of Canada offered an overview of the evolution of the Canadian land claims processes, and described the various changes and modifications made to the Government's procedures over the past two decades aimed at overcoming difficulties, reflecting constitutional and legal changes and other factors. The speaker highlighted regional variations in the negotiating processes, the inclusion of self-government provisions in the negotiations, and the difficulties Canadian negotiators encountered in coming to understand indigenous traditions of land ownership and collective responsibility for traditional territories. Land settlements often included co-management of resources. Extinguishment or surrender was indeed a central issue and the Government had been examining alternatives. Recent court decisions indicate that in order for rights to be considered extinguished, there had to be clear intent to do so. Another policy development was the implementation of the inherent right to self-government. The speaker underlined the need to establish a "negotiation culture" and for processes to be open and flexible.

35. The representative of the World Council of Indigenous Peoples described the different concepts of land tenure, land title and land claims resolution in Latin America and outlined the need for the establishment of global standards and laws to govern the rights of indigenous peoples.

36. The representative of Kenya described the experience of the Kenyan people under British colonial rule and the efforts, following independence, to recognize the land rights of Kenyan people. He placed particular emphasis on the efforts to accommodate the collective rights of tribal peoples, to place limits on the subdivision or sale of collective lands, and to provide a basis for economic development. He referred to legal and constitutional arrangements in certain countries which recognized indigenous land rights. He regretted that those laws were not always respected or adhered to in practice by Governments.

37. The representative of Indonesia outlined the post-colonial history of Indonesia, with a particular focus on the development of a national land policy. The approaches to land emphasized a respect for customary law and traditional land-holding systems, the validity of collective methods of land ownership, and the role of the national Government as a final decision-maker

when customary laws could not resolve disputes. For Indonesia, the recognition of customary and traditional rules was the basis for building a culturally and ethnically diverse nation.

38. The observer for the Assembly of First Nations described the history of the Dene, with special reference to the difficulties encountered with Treaty 8 and Treaty 11. Disagreements over the meaning and intent of the treaties resulted in legal action against the Government and a reopening of land claims negotiations. The negotiations with the Dene did not result in a final settlement. The Government offered discussions with each of the individual peoples, resulting in two final agreements and considerable division among the Dene. The speaker emphasized the need for an independent international body to oversee national land claims negotiations and settlements, and felt that such an agency would alert national Governments to their obligations under international and national law.

39. The representative of New Zealand indicated that the Government is currently reviewing its position on extinguishment of indigenous title and described the current negotiating process. She also identified the matter of group representation as a potentially serious problem, asking who was legitimately able to speak for a specific indigenous group.

40. The representative of the MAA Development Association provided a community-based perspective on the land situation in Kenya, and expressed his people's solidarity with the indigenous peoples of the world. The speaker pointed out that the indigenous people of Kenya had suffered through colonialization, lost much of their land through the introduction of new land tenure systems, and were attempting to secure a return of traditional territory.

41. Mr. Coates provided a summary of the discussion under this agenda item. He outlined the strong consensus that was evident among the indigenous peoples about the nature, extent and impact of the land problem, and the strong emotions - anger, frustration and sadness - that surrounded the issue. He argued that the presentations made it clear that cultural accommodation and understanding had not been achieved between indigenous and non-indigenous peoples, and that greater education of non-indigenous peoples was required, particularly to inform them of the cultural, social and spiritual basis of indigenous land claims. The seminar had to use the emotions generated through the discussion to support the search for practical solutions. Although all could agree with the need to pursue justice and equity and to continue the struggle for full equality, the practical considerations surrounding land development, expropriation, environmental degradation, culture change and social problems presented a compelling case for moving forward with a practical agenda that would help expedite the international indigenous land rights process.

## III. DISCUSSION OF THE NEGOTIATION PROCESS AND LEGAL ARRANGEMENTS FOR THE DEMARCATION, TITLING AND PROTECTION OF LANDS

42. Mr. Sanchez, replacing Mr. Roque Toldan Ortega as resource person, emphasized the common problems shared by indigenous peoples all over the world: dispossession of their lands, consideration of indigenous territories

as unused and unoccupied, use of their lands for public purposes, restrictions on the use of natural resources, and unilateral extinction of inherent and acquired territorial rights. He drew attention to three specific situations: (a) countries in which there were still no legal arrangements recognizing and guaranteeing indigenous land rights; (b) countries which had adopted laws, agreements or treaties recognizing indigenous land rights but had not yet established mechanisms for their realization; and (c) countries which had made advances in the recognition of land rights and were now experiencing an erosion of those rights.

43. Mr. Sanchez considered that the central source of the contradictions between indigenous rights and the rights of nation States was the question of land rights. For indigenous peoples land had a spiritual value, gave an identity to a people, and the land and the resources were viewed as a whole. Land was seen as a gift which they must care for, or as a living entity with which they had reciprocal relations. Under national law land was regulated as property, was seen as being of economic value, and its resources could be divided in an abstract manner. The movement of indigenous peoples for the recognition of their land rights included the notion that they should enjoy dominion over the totality of the territories where they had lived since time immemorial. Mr. Sanchez described the situation of land rights in the Amazon region and identified some of the legal difficulties. He expressed the hope that in the course of the Decade all indigenous peoples' lands would be fully recognized.

44. Indigenous participants and observers referred at length to the different aspects and stages of the negotiation process. The requirement by some States for indigenous peoples to accept the extinguishment of pre-existing land rights based on treaties or customs as a precondition for starting negotiations was detrimental and placed indigenous peoples in an unequal position from the start. Indigenous negotiators thus found themselves in the position of having to prove their claims to their own land. Equally problematic, according to indigenous speakers, were the negotiation processes into which indigenous communities were driven without having been adequately informed by the States as to the full legal consequences. It was stated that such procedures constituted misrepresentation and amounted to a fraudulent process.

45. Some participants claimed that antiquated legal concepts, including the concept of terra nullius which was incompatible with international law, were still held by some States and hindered the negotiation processes. Similarly unacceptable was the concept that indigenous peoples were not considered by law to be fully capable of handling their own affairs. Moreover, the protracted nature of the negotiation process over land rights often created mistrust, placed a heavy burden on the human and financial resources of indigenous communities and had a demoralizing effect on the community as a whole. Speakers mentioned examples of land claims processes which had lasted years or even decades.

46. Several indigenous speakers recommended that, apart from treaties between States and indigenous peoples, the legal framework of the Charter of the United Nations, Chapter XI, in particular Article 73, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant

on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as International Labour Organization Convention No. 169, should also be taken into account in negotiation processes. Participants referred to previous United Nations conferences which the Seminar should build upon, in particular the 1991 meeting on indigenous self-government in Nuuk, Greenland, the 1992 technical conference on indigenous sustainable development in Santiago, Chile, and the 1993 Arctic consultation held in Khabarovsk, Russian Federation. It was also stressed that the Seminar should draw from the study on treaties and other arrangements between indigenous populations and States under preparation by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and from the draft United Nations declaration on the rights of indigenous peoples prepared by the Working Group on Indigenous Populations.

47. Governmental and indigenous experts and other participants referred to the importance of a positive constitutional framework for indigenous land rights and negotiation processes. Constitutional reforms which were described as positive included the recognition of an adoption of provisions relating to the multi-ethnicity of the State, non-discrimination, the right to communal lands, and the right of indigenous peoples to preserve their cultural identity, to self-determination and to autonomy. Several indigenous speakers identified the lack of implementation of positive constitutional provisions or their explicit violation as detrimental to the negotiation process.

48. Several speakers stated that the substantive participation of indigenous peoples in decision-making on all matters of concern to them creates the overall framework for their meaningful participation in land claims negotiations. Marginalization of indigenous peoples should be eliminated. The full participation of indigenous women should be guaranteed and their contribution recognized.

49. Several participants argued that the lack of implementation of constitutional provisions, laws, treaties, arrangements and international norms on indigenous issues created a state of "lawlessness", including concerning land rights. The efforts spent over many years in concluding agreements were in vain if the agreements were not followed by implementation. Such lawlessness was similar to impunity, and it was stressed that this grave problem had to be addressed by all concerned as a matter of priority. Several indigenous speakers suggested that an independent international commission to adjudicate land claims with impartiality be established.

50. The representative of the Consejo Aguaruna y Huambisa suggested that, based on experiences in his part of the world, the titling of indigenous land had to take into account indigenous cultural practices. This point was repeated by other experts, both governmental and non-governmental.

51. The representative of Chile described the efforts of the Chilean Government since the democratization of the country to establish, together with the indigenous movement, the recognition of the fundamental rights of the indigenous peoples. Chile had also played an active role at the international level and had hosted a similar expert seminar in 1992 on the sustainable self-development of indigenous peoples. Different laws and

policies had dramatically decreased indigenous lands in the last two centuries. With the democratization of the country, a special commission was created composed of an equal number of indigenous and governmental representatives which worked on a draft law recognizing the political, territorial and cultural rights of indigenous peoples. However, the Chilean Congress had made important changes in the draft and had approved neither a proposed constitutional revision nor the ratification of ILO Convention No. 169. None the less, the law as finally adopted defined indigenous lands, declared them inalienable, created a register of indigenous lands, and created a special fund for indigenous lands and waters aimed at contributing financially to the resolution of land conflicts. The mechanism of buying lands was necessary due to the excessive protection of the right to property in Chilean law, which renders expropriation practically impossible. This fund allowed close to 50,000 hectares to be transferred to indigenous peoples and communities.

52. The speaker concluded (a) that each country had its own way to advance towards the recognition of indigenous territorial rights; (b) that positive developments in this area could not take place without effective participation by indigenous peoples, without which policies, laws or treaties would constitute an imposition; (c) good faith between the parties was indispensable; (d) mechanisms differed depending on whether the territories were occupied exclusively by indigenous people or constituted property divided between indigenous and non-indigenous inhabitants, the second case presenting many more complications; (e) recognition of indigenous land was meaningless if the land was isolated from its natural resources; (f) recognition of the right to land must be accompanied by recognition of the larger context of indigenous peoples exercising various forms of self-government or self-management of their own affairs.

53. The representative of the Saami Council referred to the land rights provisions in ILO Convention No. 169, article 14, and stated that the Norwegian Government and the Saami Parliament in Norway had contradictory positions on the interpretation of paragraph 1, which states that "the rights of ownership and possession" of indigenous land shall be recognized. The Norwegian Government was of the opinion that strongly protected usufruct must be regarded as sufficient for the fulfilment of article 14, paragraph 1. The Saami Parliament and other relevant Saami bodies have said that the Norwegian position is incompatible with the plain meaning of article 14. The speaker stressed that the official ILO records very clearly indicated that the Norwegian position was not a correct interpretation of article 14 and that the ILO Committee of Experts should clarify the interpretation. He also recommended that the Seminar reject the Norwegian interpretation of article 14.

54. The same expert also highlighted the difficult situation of indigenous land rights in the Russian Federation and underlined that in many instances there were hardly any mechanisms for dealing with land claims in that country. The speaker referred to several instances of the lease of indigenous lands and waters to private persons and companies without consulting the local authorities. Despite the existence of constitutional provisions, there was uncertainty as to how they were interpreted by the Government and the Duma. Saami people in Russia did not hold title to their traditional land and water,

and their right to use the land and its resources was also denied. The Finnish and Norwegian Constitutions recognized and protected the Saami and their culture and traditional livelihoods. Explicit guarantees were not included in the Swedish Constitution. The Swedish Supreme Court had stipulated in a 1981 case that the State had to be regarded as the owner of the disputed area and that the Saami had been limited to rights of use. However, the Court stated that it was possible for the Saami to acquire title to land by using it for traditional Saami economic activities. The subsequent erosion of Saami rights through laws and policies in Sweden had recently forced the Saami to bring a lawsuit before the European Court.

55. The observer for the International Indian Treaty Council referred to the use of the term "land rights" and underlined that the indigenous way of expressing the concept was more in terms of "responsibilities" towards sacred Mother Earth. In order for a negotiation to have true meaning for indigenous peoples, the following should prevail: (a) existing applicable rights, instruments and agreements had to be recognized and applied; (b) historical or ongoing violations of pre-existing rights, treaties and agreements had to be redressed as a starting-point for negotiations; (c) fully informed consent had to apply in the terms and process of the negotiation, the results of the negotiations and the ratification of any resulting agreements and there should be no political, financial or any other type of pressure on indigenous peoples to enter into negotiations or to settle; (d) both parties to the negotiation had to be treated as equals in all aspects of the process, with full rights of self-determination respected; (e) traditional indigenous leadership, structures, languages, social systems and legal systems had to have equal standing and weight in all aspects of the negotiations; (f) effective measures for implementation, protection and redress of any violations or non-compliance had to be contained in the provisions of the final negotiated agreement; (g) neither party could unilaterally be the final arbitrator of a bilateral settlement, especially in case of a disputed claim. There had to be a mechanism for arbitration or oversight agreed upon by both parties in advance in case mutually acceptable agreements cannot be reached. International oversight, arbitration or mediation was especially important in cases where international agreements such as treaties were being violated, in issues affecting the rights of indigenous peoples who live on both sides of a colonial border, or when the human rights of indigenous peoples were threatened. This role could be given to the permanent forum for indigenous peoples being developed within the United Nations system.

56. Referring to the Maori experience, the observer for the Maori Congress described the role of the Waitangi Tribunal established in 1976. As a result of indigenous pressure the Tribunal was given the authority to deal with claims from 1840 onwards which allowed the Maori to present comprehensive information. With a Maori as the head judge, the Tribunal ruled that the Crown had the responsibility to protect indigenous lands and resources and recommended the return of land in certain cases and, when that was not possible, the guarantee of compensation. The public hearings pushed the Government to more honourable settlements. The clash with private interests, however, led to the disempowerment of the Tribunal and negotiations now take place between Governments and Chiefs, rather than with the community as a whole. The speaker claimed that this had resulted in the co-option of indigenous leaders by the Crown. Settlements were thus reached without

consultation with the indigenous people and as a result were violently opposed by them. Thus, while the Tribunal experience had been positive, subsequent negotiations conducted without genuine consultation and under the duress of economic hardships and political pressure had not yielded positive result for the Maori.

57. The representative of the Inuit Circumpolar Conference summarized elements of the Nunavut land claims agreement and other agreements in Canada and made a series of recommendations based on those experiences. The recommendations included the following: land rights settlements should be freely negotiated and not imposed unilaterally; the establishment of constructive relationships between States and indigenous peoples through the negotiation of land agreements required recognition of the inseverable connection of indigenous peoples to their lands; agreements aimed at settling indigenous land rights issues should recognize and affirm indigenous rights, not extinguish them; interim protection measures should be taken to protect indigenous lands, prior to and during negotiations; land agreements, including self-government agreements, should be drafted in the language of the indigenous peoples and have equal status with other language versions; independent bodies such as commissions that included equal indigenous representation should oversee the negotiation of indigenous land rights agreements; indigenous women should be involved in all aspects of negotiation and implementation of land agreements; dispute resolution mechanisms were required for full, effective and expeditious implementation of land agreements; political will, in the form of a genuine commitment to power-sharing on the part of States, was essential to the success of co-management regimes, and to the avoidance of adversarial relations between the parties to land agreements.

58. The representative of the Philippines, also a member of an indigenous community, said that some 110 ethnic linguistic communities, about 10 million people, lived in the north of the country. The first recognition of indigenous title in the Philippines took place in 1916. The present constitutional framework recognized and promoted indigenous communities and recognized the right of cultural communities to preserve their culture. These positive constitutional provisions required further legislation for their implementation, but the latter has not yet been adopted by Congress owing to the pressure of mining or timber interests. The effort for the recognition of ancestral lands should continue with determination.

59. The representative of New Zealand stated that interim procedures existed in her country pending land settlements, such as a moratorium on the sale of land expropriated by the Crown. She stressed the fundamental importance of educating the public on the significance of indigenous land issues.

60. The representative of the Cordillera Peoples' Alliance underlined the lack of consultation by the Government and the creation of division among indigenous people. He pointed out that the recognition of land rights had to be obtained first; only then should demarcation proceed. He complained that some United Nations agencies came to indigenous areas and campaigned for demarcation without consultation with the indigenous communities concerned.

He recommended that the United Nations agencies, before funding demarcation projects, consult with the indigenous peoples concerned to ensure that they agreed on the specific demarcations.

61. Mr. Sanchez summarized the discussions. He stated that indigenous delegates had shown through numerous examples the necessity of revising legal principles so that concepts such as the extinguishment of inherent rights or terra nullius were eliminated and measures introduced to safeguard the fundamental right of indigenous peoples to their ancestral lands. Indigenous peoples also demanded that procedures be created to implement and monitor laws and treaties which recognized their land rights. He said that the following themes had been debated: (a) the unilateral extinguishment of indigenous land rights; (b) the lack of knowledge about the historical rights of indigenous people to their lands and resources; (c) the difficulties of implementing laws and treaties; (d) the restrictions of access and control of indigenous peoples over their lands and resources; and (e) the separation made in many legal arrangements between the land and its resources.

## IV. LAND AS AN ECONOMIC BASE: OPPORTUNITIES FOR SUSTAINABLE DEVELOPMENT AND ARRANGEMENTS CONCERNING THE USE AND SHARING OF NATURAL RESOURCES

62. Mrs. Donna Gasgonia introduced the subject and examined a number of basic points as set forth in her background paper. She stressed the fact that the indigenous peoples were planning to continue using the territories they had been occupying since time immemorial as they considered that that occupation was dictated by a divine being. That position was closely linked to those peoples' commitment to stewardship, biodiversity and sustainable development. The possible dispute with States over the treatment of ancestral lands lay in laws which regarded the land as a commodity. Owing to a mistaken idea of the indigenous person's relationship with the land, it had not been recognized that the indigenous peoples could have legitimate aspirations to economic development while protecting and preserving the environment.

63. To illustrate experience in her region, she referred to the case of the Philippines, where the lands had been seized first by the colonizers and later by the State for concessions. She cited the land, forestry and mining laws as prime examples of policies that favoured the present occupiers. The problem with peace and order which still persisted in a few regions bore witness to the disregard of the rights of the original occupants of the territory. She underlined the apparent contradiction in the fact that, even when some people had titles to territorial concessions, the indigenous peoples kept their lands. That showed that the holders of concessions had not managed to dominate substantial tracts of ancestral territory.

64. Mrs. Gasgonia stated that generally speaking the maintenance of cultural integrity played a predominant part in the conservation of the territory in that it maintained the identity of the group and thus the very existence of the indigenous community. With loss of cultural integrity, a lessening of cultural pride and the gradual inroads made by a foreign culture, there was a risk that ancestral lands might be lost, even by peaceful means. The experiences of the Mangyans and the Buhid of Mindoro revealed a close relationship between the maintenance of language and territory. The former

had lost identity and with it their lands, while the latter were strengthening their identity by preserving their language and had been successful in their stewardship of ancestral lands. The identity of the Buhid, which was linked to the land, had enabled them to demonstrate that they had succeeded in their relationship with the land by using customary laws and procedures to plan and carry out activities under the stewardship agreement.

65. Lastly, she stated that there were instances in Asia which showed that some indigenous people had gained legal recognition for their traditional resource exploitation activities. There were still matters to be considered, however: for example, once recognition had been gained, it was important to control migration. The stewardship agreements must cover long periods so that improvements in the land could be seen. Agreements could also be concluded between the indigenous peoples and Governments, with a view to sustainable development.

66. In the subsequent debates, the indigenous participants, observers and government experts made valuable contributions to the matters referred to. The representative of the World Council of Indigenous Peoples questioned the concept of self-determination of peoples and referred to the importance of allowing the indigenous peoples to exploit their resources (renewable and non-renewable). States must not adopt laws or regulations for the indigenous peoples since, in the case of some prohibitions, they had displayed their skill and knowledge, as with sustainable development. For a local observer, lack of knowledge about the relationship between the human being and nature was destroying the resources available in the indigenous territories, resulting in a lack, and indeed the disappearance of food for the native peoples. It was important, she said, that that destructive force should end. The observer for Vuntut Gwitchin First Nation referred to the brotherhood of human beings on the land and to the consequent need for all to work together to save the available resources: preservation of culture was vital if they were to continue living as indigenous peoples.

67. The representative of Canada referred to environmental protection and sustainable development, stressing that protection policies differed in each country. Canada, for its part, was incorporating the concept of co-management for the protection of the environment, so that the administration of resources by the Government must allow for the participation of the peoples concerned. Such participation was being achieved by setting up internal management boards in which the peoples concerned had approximately 50 per cent representation.

68. The observer for the International Indian Treaty Council said that, although the right to development had been recognized internationally, it would be denied so long as the right of the indigenous peoples to manage their own land was not respected.

69. The Athapaskan Chief underlined the threat to the survival of the native peoples posed by oil exploitation and voiced an appeal for respect for all forms of life and for the need to allow them to take part in decision-making. In that connection, another observer remarked that not only oil exploitation but also military activities, nuclear power stations and other activities affected animal reproduction and endangered the whole of the existing biomass in the indigenous territories.

70. The representative of the Vuntut Gwitchin Nation stated that the real experts in the matter were persons from the communities and remarked on how tree-felling and the present uses of forests were affecting various phenomena, causing inter alia the loss of medicinal plants and products. He urged that, in the International Decade of the World's Indigenous People, sustainable development targets should be met and the indigenous people who were the true experts should participate in solutions. Another participant emphasized the importance of education and the need, when speaking of the environment, focus on the land as the place from which we came and the place to which we will return.

71. The representative of the Saami Council urged that treaties should be revised, and in particular fishing treaties, since the people were being denied the opportunity of taking part in that economic activity in several parts of the world.

72. The representative of the Council of Maya Organizations of Guatemala recalled how the lands of the Mayas had been seized and how a Guatemalan minority owned 85 per cent of the land. The percentage of land in the possession of the Mayas was overcultivated, contaminated and not very suitable for farming. He urged other indigenous peoples to ensure compliance with the agreements now being concluded between the Mayan peoples and the civil Government.

73. The representative of the Inuit Circumpolar Conference proposed a review of the documents and conclusions of the various international forums in which indigenous matters had been discussed, with special reference to sustainable development and the relationship with the indigenous peoples.

74. The representative of Chile endorsed Mrs. Gasgonia's proposals, and urged that the treaties between Governments and indigenous peoples, in which the State had to provide support through technology and the indigenous people through their ancestral knowledge of the land, should be perpetuated. He referred to Chile's experience with the Indigenous Development Fund, which had helped in the recovery of land. At the regional level there was also the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean, which depended on resources derived from international cooperation, and Governments and indigenous peoples to gather financed projects in those villages which took on self-management initiatives.

75. Mrs. Gasgonia summed up all the statements made by participants on the subject. She noted that in some parts of the world Governments and indigenous peoples had discussed and negotiated land and resources and also stewardship agreements at the national and State level. But there had also been sad experiences involving the imposition of a different philosophy, belief and ideology by one people on another. None the less, there was a continuing wish on both sides - Governments and indigenous peoples - to arrive at acceptable agreements with a view to sustainable development. The indigenous peoples wanted Governments to recognize their rights to self-determination, their legal customs and traditional territories as a precondition for negotiations on lands and resources for sustainable development. Lastly, it would be advisable to establish a fund that could provide support for the indigenous peoples in managing their resources along clear and well-defined lines.

## V. THE ROLE OF INTERGOVERNMENTAL ORGANIZATIONS: TECHNICAL COOPERATION TO GOVERNMENTS AND INDIGENOUS ORGANIZATIONS

76. The Chairman invited Mr. Roger Plant to introduce item 7 of the agenda. Mr. Plant referred to the background paper prepared by him and distributed prior to the meeting. At the outset he expressed regret that the United Nations system was not represented at the seminar, in particular those organizations which were active in promoting indigenous development.

77. Mr. Plant stated that land rights were human rights. The situations of indigenous people around the world varied but the importance of land, both for the material and spiritual survival of these people was universal. He noted certain differences between indigenous peoples. For example, he referred to the existence of treaty rights in North America which were rare in Latin America. In Amazonia, indigenous peoples based their claims to the land on immemorial possession. He also distinguished between indigenous peoples who had effective control over land and resources and those who had lost most of their lands and lived on areas too small to allow for their economic survival, or who were landless. Mr. Plant referred to both Guatemala and India where the majority of indigenous or tribal people had been deprived of their lands. He recognized that in Latin America there were numerous examples of communal indigenous ownership of lands, but stated his concern about the tendency over the last few years to privatize these lands.

78. Mr. Plant recommended that the United Nations system help to empower indigenous peoples to pursue their own forms of sustainable development. The United Nations organizations should not only provide technical assistance but should also provide indigenous people with access to and effective participation in the powerful operational and funding parts of the world organization. In particular, Mr. Plant referred to the World Bank, the Global Environment Facility and the mechanisms established to follow up Agenda 21 of the United Nations Conference on Environment and Development, as well as the standard-setting work of the United Nations.

79. Mr. Plant spoke of the human rights verification mission in Guatemala (MINUGUA). In March 1994 a comprehensive agreement on human rights had been signed by the Guatemalan Government and the Unidad Revolucionaria Nacional Guatemalteca (URNG) and a year later, in March 1995, an agreement on the rights and dignity of indigenous peoples had also been signed. The indigenous agreement included sections on land titling and restitution and strengthened indigenous organizations, giving them opportunities to participate in a pluricultural society. He thought that the United Nations role in Guatemala might serve as a useful example of what could be achieved practically by the Organization to promote indigenous rights.

80. The debate under this item of the agenda was severely limited by the absence of representatives of intergovernmental organizations. Although 15 such organizations had been invited by the Centre for Human Rights, none had attended. Most speakers who took the floor expressed their regret that representatives of the United Nations agencies had not been able to participate.

81. The representative of Canada spoke of the need to share experiences concerning indigenous land rights and raised a number of issues for consideration. These included the following questions: How are land claim research and negotiation funded? What are the criteria for entering into negotiations? What are the criteria for determining representativity of negotiating organizations and is there any special provision for representation of women? How open are the negotiations, in particular in their treatment of third party interests and in building and maintaining broad public support? What is the ratification process? What is the nature of land title recognized through settlements? How are overlapping claims dealt with? How are transboundary claims dealt with? What is the mechanism used for achieving certainty? Are there implementation planning mechanisms? Are there dispute resolution mechanisms? Are environmental regimes standard features of claims settlements? What are the measures for training and capacity-building? What are the possible models for oversight and monitoring?

82. The representative of New Zealand stated that she would also have liked to have heard more about the practical experiences of other United Nations bodies. The representative of the Philippines spoke of the difficulties in his country where development for essential purposes such as irrigation or energy production often took place on indigenous lands. The representative of the Inuit Circumpolar Conference supported the development of a United Nations permanent forum for indigenous peoples and referred to articles 36 and 41 of the draft United Nations declaration on the rights of indigenous peoples. She asked that the United Nations organize further workshops on the proposal. The representative of the Maori Congress called for caution in demanding indigenous involvement in the United Nations. He was concerned that indigenous people would become assimilated and serve as subalterns. He called for a bicultural approach based on the cooperation of equals.

83. The representative of the Centre for Human Rights was invited by the Chairman to provide information about its activities relating to indigenous peoples. The representative explained that inter-agency meetings on indigenous peoples had been taking place since 1990 in an effort to keep the main individuals and offices informed about activities. An informal consultation had already been held on indigenous land rights in developing countries in November 1991. He also gave some information about the Voluntary Fund for the Decade, stating that it would be in a position, subject to funds being donated by States, to support projects submitted by indigenous organizations which could be related to land issues. Finally, he explained that a review of existing mechanisms for indigenous peoples in the United Nations system would be presented by the Secretary-General to the General Assembly in autumn 1996, following which a second workshop on the permanent forum would be organized, probably in early 1997.

84. Several speakers who took the floor thought that the United Nations could play a role in contributing to the peaceful solution of land conflicts as well as of broader human rights issues. The example of the United Nations operation in Guatemala as a useful basis for resolving similar problems in other countries was mentioned both by the representative of the Consejo de Organizaciones Mayas de Guatemala and Mrs. Gasgonia. Some speakers also called for closer cooperation among the United Nations agencies, in particular the Centre for Human Rights and the Commission on Sustainable Development.

85. Mr. Plant concluded the item by making a number of suggestions about follow-up by the United Nations. He called for more training for indigenous people, a harmonization of existing guidelines of the United Nations, and further policy-oriented work on land rights. He suggested that regional advisory councils of indigenous people could be formed to assist the United Nations in its work. He also recommended further workshops of the kind organized by the Centre for Human Rights so that specific themes relating to land rights and claims could be explored further.

## VI. CONCLUSIONS AND RECOMMENDATIONS

86. At its 8th meeting, held on 29 March 1996, the Expert Seminar considered and adopted the following conclusions and recommendations:

### THE WHITEHORSE CONCLUSIONS AND RECOMMENDATIONS ON INDIGENOUS LAND RIGHTS AND CLAIMS

The United Nations Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims meeting at Whitehorse, Canada, from 24 to 28 March 1996, bearing in mind and building upon the important work already accomplished by the United Nations system, in particular in the area of standard-setting and within the context of other meetings and expert seminars such as the expert meeting on indigenous self-government held in Nuuk, Greenland, and taking into account the new partnership between indigenous peoples and the international community based on mutual respect, reciprocity and harmonious, accessible and equitable processes, offers the following conclusions and recommendations for the consideration of Governments, indigenous peoples and their organizations, and intergovernmental and non-governmental organizations:

1. Indigenous peoples have a distinctive spiritual and material relationship with their lands, and with the air, waters, coastal sea, ice, flora, fauna and other resources.

2. The importance of the issue of the link between self-determination and the right to land is recognized.

3. The promotion and protection of rights over lands and resources of indigenous peoples are vital for their development and cultural survival.

4. Indigenous peoples continue to be affected by the consequences of colonialism and are often deprived of a land and resource base.

5. The recognition of the rights of indigenous peoples to specific lands which they occupy cannot be separated from the recognition of other rights, within larger areas necessary for their material and cultural development.

6. The existence of a fair constitutional and legal system, including a fair judicial system, able to guarantee due process of law is an important framework for the success and implementation of land settlement processes. In some countries experience has shown that the establishment of fair judicial processes for the implementation of treaties, agreements and other

constructive arrangements with indigenous peoples has been a useful means towards achieving the respect of such agreements and the education of the indigenous and non-indigenous communities.

7. Experience has shown that the equitable and fair conclusion and implementation of treaties, agreements and other constructive arrangements relating to land between States and indigenous peoples can contribute to environmentally sound and sustainable development for the benefit of all.

8. Land rights and compensation issues arising from the taking or use of indigenous lands for military or security purposes, whether in war or peacetime, can raise special problems, which need to be addressed by Governments and the international community.

9. Where land agreements are intended to protect the way of life or cultural integrity of indigenous peoples, social issues should be given equal emphasis to economic and resource issues.

10. Political will, in the form of a genuine commitment on the part of Governments, to partnership in decision-making is essential to the success of co-management regimes, and to the avoidance of adversarial relations between the parties to such regimes.

11. It is important that practical effect be given to the spirit and intent of treaties and land agreements. This requires a willingness by the parties to act as partners, not adversaries, as well as a clear understanding of the spirit and intent of treaties and land agreements by all parties.

12. Where the division of indigenous lands and attempts to divide these lands through individual titles as well as the existence of land privatization policies menace the material and cultural survival of indigenous peoples, this is a matter of grave concern.

13. There is a need to inform the non-indigenous public about the significance of indigenous land rights for the very survival of indigenous peoples and the respect of their human rights. Land agreements are a way of building new constructive relationships between indigenous and non-indigenous communities.

14. The International Decade of the World's Indigenous People is an important vehicle for substantive participation of indigenous peoples in the resolution of land settlements and for increasing constructive partnerships with States and non-indigenous communities.

15. International Labour Organization Convention No. 169 is regarded by indigenous peoples as articulating some minimum standards respecting indigenous land rights. "The draft United Nations declaration on the rights of indigenous peoples", as adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, could be considered an opportunity for States to adopt an instrument reflecting a broad consensus among indigenous peoples about their land and resource rights.

16. The implementation of sustainable development should take fully into account indigenous peoples' values, knowledge and technologies, in order to ensure resources for future generations.

17. Principles or guidelines for land selection or demarcation of indigenous lands should be jointly negotiated in a fair and equitable process and without the imposition of arbitrary criteria.

18. Interim protection measures, such as moratoriums on land transfers and on implementation of proposed development projects, should be taken, as necessary, to protect indigenous lands or lands claimed by indigenous peoples from environmental degradation and alienation to third parties. Such measures would contribute to an atmosphere of good faith and to a constructive spirit in the negotiation process.

19. Effective measures for implementation, dispute resolution, amendment and enforcement of land settlements and agreements should be provided.

20. There is serious need for training, education and the required resources so that indigenous peoples may enter negotiation processes fully informed about and technically equipped for the whole spectrum of implications of land rights negotiations. Training and education should also figure prominently in settlements implementation.

21. The equal participation of indigenous women should be reflected in all aspects of negotiation and implementation of land agreements.

22. Land rights settlements should be freely negotiated, in good faith, and not imposed unilaterally by legislation or negotiated under duress or threat.

23. It should be recognized that indigenous resource management ensures the sustainability for future generations and is rich in practical applications of wildlife, fish and habitat conservation.

24. Parties in land rights negotiations should make particular efforts to ascertain and act upon the views of elders in these matters.

25. Governments should renounce discriminatory legal doctrines and policies which deny human rights or limit indigenous land and resource rights. In particular, they should consider adopting corrective legislation and policies, within the International Decade, regarding the following:

(a) The doctrine of terra nullius;

(b) The doctrine that indigenous communities do not have the capacity to own land or to own land collectively;

(c) The doctrine that indigenous land, rights, title or ownership may be taken or impaired by the State or third parties without due process of law and adequate and appropriate compensation;

(d) Doctrines or policies according to which indigenous lands must be held in trust regardless of the will of the indigenous peoples concerned;

(e) Doctrines and policies imposing an extinguishment of indigenous land rights, title or ownership;

(f) Policies which exclude some indigenous peoples from the land claims processes established by the State.

26. Governments, with indigenous peoples, should establish fair procedures for reviewing situations and for taking corrective action in situations in which indigenous land or resources have been taken or extinguished through processes which are claimed or are found to be fundamentally unfair or discriminatory.

27. Governments have a responsibility to ensure that indigenous peoples have access to adequate resources to research and negotiate their claims so that settlements are equitable, just and enduring.

28. The structure, mandate, objectives, representation and accountability of members and mode of operation, including funding, of co-management structures should be determined through a process of negotiation with the indigenous parties to support the principle of equal participation.

29. Parties should negotiate on a basis of equality acknowledging indigenous leadership, structures, languages, and social and legal systems in all aspects of the negotiations and implementation. For example, every effort must be made for agreements relating to land rights to be drafted in the language of the indigenous peoples concerned and for the indigenous language version to have equal status with the State language versions.

30. Governments should recognize the lands rights and titles of indigenous peoples and implement effective and appropriate procedures and mechanisms, including constitutional, legal or treaty agreements.

31. Throughout the whole process, the procedures for the recognition of these rights should provide for the effective representation and informed participation of indigenous peoples as equals. Without this, any legislation or treaty on this matter constitutes an imposition and not an enduring agreement.

32. States should make their best efforts to guarantee access to land of indigenous peoples deprived of land or who lack sufficient land and depend upon it for their survival, in order to guarantee their cultural and material development. Mechanisms such as land funds and claim settlements processes where they exist are encouraged.

33. Governments should review their laws and policies in order to address the concept of the inherent rights to self-government and self-management of indigenous peoples.

34. Governments are urged to consider the establishment of impartial mechanisms to oversee and facilitate fair and equitable conclusions to land claims processes and the implementation of land agreements, including international mechanisms as necessary.

35. Governments should welcome, encourage and open up trade among indigenous peoples and other parties from different countries and facilitate such trade.

36. In its consideration of the establishment of a permanent forum for indigenous peoples, the United Nations General Assembly should consider whether the forum could play a constructive role regarding problems pertaining to land rights.

37. The United Nations should prepare a study involving the direct participation of indigenous experts on the issue of extinguishment of land rights and its implications, with a view to recommending new approaches in this area with particular regard to the recognition and implementation of rights.

38. The United Nations and its specialized agencies should consider providing technical assistance to States and indigenous peoples to contribute to the resolution of land claims.

39. The World Bank should consider providing loans to indigenous peoples directly, in particular in relation to collectively owned land.

40. The United Nations system, before funding demarcation projects, should have adequate consultative mechanisms at all stages of the planning and implementation of projects.

41. Military and occupation practices, carried out by Governments individually or collectively, which have an impact on the ways of life of indigenous peoples should be open to international consideration in accordance with international human rights standards. The impact on lands and the ways of the life of indigenous peoples should be subject to appropriate environmental review in conjunction with indigenous peoples.

42. International cooperation in support of the administrative management of their lands and resources should be done in full cooperation with indigenous peoples.

43. Indigenous peoples should participate in decision-making and policy regarding land, resources and development at international, regional, national and local levels, including United Nations processes such as the Commission on Sustainable Development and the Convention on Biological Diversity.

44. The United Nations, its specialized agencies and other intergovernmental organizations should assure that indigenous peoples' cultural diversity, traditional values and ways of life are protected in line with Agenda 21 and the institutions established for its follow-up.

45. For the purpose of developing the resources of indigenous peoples and communities, States and intergovernmental organizations which provide international aid for such purposes should make their best efforts to provide development assistance through organizations of indigenous peoples.

46. The United Nations, in the framework of the International Decade, should consider holding further consultations, workshops and seminars relating to indigenous land rights and interests focusing on issues such as the negotiation process, co-management regimes and other matters.

47. The United Nations system should consider ways and means of harmonizing existing guidelines relating to indigenous peoples.

48. The United Nations system should place emphasis on comparative policy work relating to indigenous land titling.

49. The Centre for Human Rights should consider collecting examples of indigenous land agreements to facilitate the promotion of technical cooperation in this field.

50. The United Nations system should consider creating indigenous advisory councils at all levels, including the regional level, to provide possibilities for indigenous participation in project and programme planning and implementation.

51. The International Labour Organization should encourage systematic analysis by indigenous organizations of articles of its Indigenous and Tribal Peoples Convention, 1989 (No. 169).

52. The International Labour Organization's Committee of Experts should clarify the interpretation of article 14, paragraph 1, of International Labour Organization Convention No. 169.

53. The United Nations system should organize training workshops for representatives of indigenous organizations, in particular on questions relating to land.

54. The United Nations system should consider how the Guatemalan Agreement on Identity and Rights of Indigenous Peoples can provide guidance in other situations.

55. The Expert Seminar requests that the present report be submitted to the fourteenth session of the Working Group on Indigenous Populations and annexed to the Secretary-General's report on the International Decade to be presented to the fifty-first session of the General Assembly and that it be published and given the widest possible dissemination.

## Annex

## LIST OF PARTICIPANTS

### Resource persons

Mr. Kenneth Coates, Mrs. Donna Gasgonia, Mr. Roger Plant, Mr. Enrique Sanchez

### Governments

Canada, Chile, Fiji, Indonesia, Kenya, New Zealand, Nicaragua, Philippines

### Indigenous organizations

Aboriginal Land Corporation, Consejo Aguaruna y Huambisa, Consejo de Organizaciones Mayas de Guatemala, Conselho de Articulaçao dos Povos e Organizaçoes Indigenas do Brasil, Cordillera Peoples' Alliance, Council of Yukon First Nations, Indian Law Resource Centre, Inuit Circumpolar Conference, MAA Development Association, Maori Congress, Saami Council, World Council of Indigenous Peoples

### Observers

Aboriginal Council of British Columbia, Algonquin Anishnabeg Nation, Assembly of First Nations, Australian High Commission, Canadian Foundation for the Americas, Chickaloon Village Traditional Council, Confederacy of Treaty Six First Nations, Congreso de la Unión Mexico, Dawson Indian Band, Grand Council of the Crees (of Quebec), Innu Nation, International Council on Metals and the Environment, International Indian Treaty Council, Kaska Nation, Kluane First Nation, Kwanlin Dün First Nation, Liard First Nation, Metis National Council, New Zealand Maori Council, Northern Native Broadcasting, Tribal Council Treaty 4 Territory, Vuntut Gwitchin First Nation

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